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REMARKS***Status of the Application:***

Claims 1–51 are the claims of record of the application. Claims 1–51 have been rejected.

Claim Rejections -35 USC § 112 Second Paragraph (Indefiniteness)

In paragraph 2 of the office action, claims 1–23 were rejected under 35 USC 112, second paragraph, as being indefinite. Regarding claims 1, 8, 15, the Examiner asserts that the phrase "type" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.

The Applicants respectfully disagree that the use of "packets of a first type," packets of a second type," and so forth render the claims indefinite. Packets of the first and second type are well defined in the specification. Furthermore, one in the art would understand that packets may have different structures and/or meanings and/or purpose, and the "type" of a packet can be used to packets having different structure and/or purpose.

The Examiner referred to MPEP 2173.05(d). This part of the MPEP refers to use of Exemplary Claim Language ("for example," "such as"). The MPEP continues:

Description of examples or preferences is properly set forth in the specification rather than the claims. If stated in the claims, examples and preferences lead to confusion over the intended scope of a claim. ... Examples of claim language which have been held to be indefinite because the intended scope of the claim was unclear are:

- (A) *"R is halogen, for example, chlorine";*
- (B) *"material such as rock wool or asbestos" Ex parte Hall, 83 USPQ 38 (Bd. App. 1949);*
- (C) *"lighter hydrocarbons, such, for example, as the vapors or gas produced" Ex parte Hasche, 86 USPQ 481 (Bd. App. 1949); and*
- (D) *"normal operating conditions such as while in the container of a proportioner" Ex parte Steigerwald, 131 USPQ 74 (Bd. App. 1961).*

Applicants cannot find any use of "for example," "such as" or any other exemplary language in claims 1, 8, or 15. Perhaps the Examiner is confusing the use of the term "such that" with exemplary language. *Such that* would be understood by those in the art to mean "arranged in a manner so that."

Therefore Applicants respectfully request that the rejection under 35 USC 112 be withdrawn. Claims 1–23 are believed allowable, and allowance of these claims is respectfully requested.

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Purely in the interest of furthering prosecution, the Applicants have deleted the phrase after "of a first type" in claim 1. The Applicants have further made clarifying amendments to claim 8.

Double Patenting

In paragraph 4 of the office action, claims 1–51 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1–51 of co-pending Application No. 10/815,283 (CISCO-8699).

Purely to expedite prosecution, Applicants have attached a terminal disclaimer, which overcomes the rejection.

Claim Rejections -35 USC § 102 and 35 USC § 103

In paragraph 6 of the office action, claims 24–30, 34–39, and 44–51 were rejected under 35 USC 102(e) as being anticipated by Beach et al. (U.S. Patent 6,404,772). In paragraph 8 of the office action, claims 30 and 40 were rejected under 35 USC 103(a) as being unpatentable over Beach et al. (U.S. Patent 6,404,772).

In paragraph 9 of the Office Action, the Examiner states that claims 31–33 and 41–43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

The following amendments are made in the interest of expediting prosecution.

The Applicants have cancelled independent claim 24, and amended claim 25 to include the limitations of claim 24, AND of claim 31 that depended in claim 25, and the Examiner stated has allowable subject matter. Claim 31 has been cancelled

Claim 25 now contains the subject matter if claim 31 and of all the limitations of the base claim and any intervening claims. Therefore, per the Examiner, claim 25 is allowable. Allowance thereof is respectfully requested.

Claims 26–30, and 32 –33 depend on claim 25, and are therefore allowable. Their allowance is respectfully requested.

The Applicants have cancelled independent claim 34, and amended claim 35 to include the limitations of claim 34, AND of claim 41 that depended in claim 35, and the Examiner stated has allowable subject matter. Claim 41 has been cancelled

Claim 35 now contains the subject matter if claim 41 and of all the limitations of the base claim and any intervening claims. Therefore, per the Examiner, claim 35 is allowable. Allowance thereof is respectfully requested.

Claims 36–40, and 42 –43 depend on claim 35, and are therefore allowable. Their allowance is respectfully requested.

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The Applicants have cancelled independent claim 44, and amended claim 45 to include the limitations of claim 44, AND of features similar to claim 31 that the Examiner stated has allowable subject matter. Claim 45 now contains only allowable subject matter, allowance thereof is respectfully requested.

The Applicants have cancelled independent claim 46, and amended claim 47 to include the limitations of claim 46, AND of features similar to claim 31 that the Examiner stated has allowable subject matter. Claim 47 now contains only allowable subject matter, allowance thereof is respectfully requested.

The Applicants have cancelled independent claim 48, and amended claim 49 to include the limitations of claim 48, AND of features similar to claim 41 that the Examiner stated has allowable subject matter. Claim 49 now contains only allowable subject matter, allowance thereof is respectfully requested.

The Applicants have cancelled independent claim 50, and amended claim 51 to include the limitations of claim 50, AND of features similar to claim 41 that the Examiner stated has allowable subject matter. Claim 50 now contains only allowable subject matter, allowance thereof is respectfully requested.

Thus, claims 1-23, 25-30, 32-33, 35-40, 42-43, 45, 47, 49, and 51, as amended, are the remaining claims and, as stated by the Examiner, are allowable.

For these reasons, and in view of the above amendment, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Conclusion

The Applicants believe all of Examiner's rejections have been overcome with respect to all remaining claims (as amended), and that the remaining claims are allowable. Action to that end is respectfully requested.

If the Examiner has any questions or comments that would advance the prosecution and allowance of this application, an email message to the undersigned at dov@inventek.com, or a telephone call to the undersigned at +1-510-547-3378 is requested.

Respectfully Submitted,

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Date


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